STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 16, 2014
v	No. 316177 Oakland Circuit Court
RYAN CHRISTOPHER KOECHIG, Defendant-Appellant.	LC No. 2013-244762-FH

Before: HOEKSTRA, P.J., and WILDER and FORT HOOD, JJ.

PER CURIAM.

Following a jury trial, defendant appeals as of right his convictions for receiving and concealing a stolen motor vehicle, MCL 750.535(7), and possession of less than 25 grams of a controlled substance, MCL 333.7403(2)(a)(*v*). Because defendant was not entitled to severance of his charges at trial and the evidence was sufficient to establish his receipt and concealment of a "motor vehicle" within the meaning of MCL 750.535(7), we affirm.

On June 16, 2012, the Alpine Tree Service, a business where defendant previously worked, was robbed. Among the items taken was a "four wheeler" or an all-terrain vehicle (ATV), which was later seen by several individuals, including defendant's fiancé, in defendant's possession and at defendant's home. In his trial testimony, defendant admitted his receipt of the vehicle. According to defendant he received the item from Shawn Hellick or Hemlock, an individual from whom defendant also purchased heroin. Defendant indicated that, initially, he agreed to repair the ATV for Shawn in exchange for money or heroin. Those plans fell through, however, and defendant eventually purchased the ATV from Shawn. Given Shawn's illegal activities, defendant understood that anything he received from Shawn would be "very sketchy" or, in other words, "a little suspect." Defendant denied, however, knowing that the ATV was stolen. When police arrested defendant, he had less than 25 grams of heroin in his pant pocket. Defendant was charged with receiving and concealing a stolen motor vehicle as well as possession of less than 25 grams of a controlled substance.

On the first day of trial, defendant offered to plead to the controlled substance offense, leaving the trial focused only on the receiving and concealing a motor vehicle charge. The trial court declined defendant's proposal, explaining that it was the court's policy not to accept pleas on the day of trial. The court's pretrial order clearly informed defendant of this policy, providing in relevant part that: "Any plea must be taken 7 days prior to trial unless other arrangements are

made with the Court to shorten the time period. No plea will be accepted at the time of trial." Consequently, the trial proceeded on both charges, and the jury convicted defendant on both counts. Defendant now appeals as of right.

On appeal, defendant argues that the trial court denied him a fair trial by refusing to sever the charges. Although defendant did not request severance of the charges, he maintains that his offer to plead guilty to the controlled substance offense somehow entitled him to severance of the controlled substance and receiving stolen property charges. In particular, defendant argues that the trial court violated MCR 6.120(C) when it refused to accept the offer to plead guilty and thereby effectively sever the counts.

MCR 6.120 governs the joinder and severance of multiple charges against a single defendant. Specifically, MCR 6.120(C) provides that "[o]n the defendant's motion, the court must sever for separate trials offenses that are not related as defined in subrule (B)(1)." MCR 6.120(B)(1) states, in relevant part, that offenses are related if they are based on:

(a) the same conduct or transaction, or

(b) a series of connected acts, or

(c) a series of acts constituting parts of a single scheme or plan.

Plainly, under MCR 6.120(C), defendant had the option of filing a motion to request the severance of the offenses for separate trials. Defendant did not file such a motion, but attempted to plead guilty to the controlled substance offense on the first day of trial, after the set time for such pleas had passed. Contrary to defendant's framing of the issue, an attempt to plead guilty to one count does not equate to a motion to sever the offenses under MCR 6.120(C). Absent such a motion from defendant, the trial court did not violate MCR 6.120(C) by proceeding with one trial for both charges. Indeed, we know of no authority that would require the trial court to sua sponte sever the charges. See MCR 6.120(B) (indicating that trial court "may," on its own initiative, sever offenses "to promote fairness to the parties and a fair determination of the defendant's guilt or innocence of each offense"). In short, given that defendant did not file a motion to sever the charges, he has not shown he was entitled to severance under MCR 6.120(C).

In any event, severance would not have been warranted in this case because the acts in question were part of a "series of connected acts." When defendant was arrested for receiving and concealing a stolen motor vehicle, he had heroin on his person, which constituted the basis of his possession charge. But for defendant's act of receiving and concealing the stolen motor vehicle, the drugs in question would not have been discovered, and, indeed, more generally speaking, defendant's drug habit was relevant to defendant's other conduct, specifically his understanding that items received from Shawn, his drug-dealer, were "very sketchy," and his claim that Shawn offered to pay him with heroin to repair the ATV. The two charges thus shared many of the same facts and circumstances. Given the related nature of defendant's criminal acts, his criminal charges were sufficiently "connected" to withstand a motion for severance under MCR 6.120(C). See MCR 6.120(B)(1)(b).

Further, defendant's claim in this regard is, at best, unpreserved, meaning review would be for plain error affecting defendant's substantial rights, *People v Carines*, 460 Mich 750, 763-

764; 597 NW2d 130 (1999), and defendant has not shown how information relating to his possession charge prejudiced him at trial, particularly given that he readily admitted his drug use, claiming that he initially accepted the ATV from Shawn in order to repair it in exchange for heroin. Indeed, the defense used defendant's drug addiction as part of its trial strategy, suggesting that it explained his association with "sketchy" characters and that defendant's fiancé lied to police when she said that defendant knew the ATV was stolen because she hoped that, by getting defendant in trouble, he would stop using drugs. In other words, even had the charges been severed, evidence of defendant's drug possession and use would have come before the jury; and, in such circumstances, joinder of the charges did not prejudice defendant. See *People v Breidenbach*, 489 Mich 1, 13; 798 NW2d 738 (2011). This is particularly true, given that the trial court instructed the jury that "the fact that the defendant is charged with more than one crime is not evidence" and juries are presumed to follow their instructions. See *People v Williams*, 483 Mich 226, 244; 769 NW2d 605 (2009); *People v Powell*, 303 Mich App 271, 274; 842 NW2d 538 (2013). Thus, on the whole, defendant has not shown plain error affecting his substantial rights. See *Carines*, 460 Mich at 763-764.

On appeal, defendant also challenges the sufficiency of the evidence supporting his conviction for receiving and concealing a motor vehicle. Specifically, defendant argues that the ATV was not a "motor vehicle" for purposes of MCL 750.535(7). Defendant frames this issue as one of sufficiency of the evidence, and this Court reviews challenges to the sufficiency of the evidence de novo. *People v Cline*, 276 Mich App 634, 642; 741 NW2d 563 (2007). However, as in *People v Hill*, 257 Mich App 126, 144; 667 NW2d 78 (2003), "defendant's argument is not a true sufficiency claim, rather it chiefly entails an issue of statutory construction that was not argued below." Consequently, we review defendant's argument for plain error. *Id*. We review issues of statutory interpretation de novo. *Id.*

When interpreting a statute, we endeavor to ascertain and give effect to the Legislature's intent. *People v Peltola*, 489 Mich 174, 181; 803 NW2d 140 (2011). Because the most reliable indicator of the Legislature's intent is the words in the statute, we begin with the language of the statute itself. *Id.* If a statute contains a specific definition for a word, the statutory definition is controlling. *People v Lewis*, 302 Mich App 338, 342; 839 NW2d 37 (2013). Where words are undefined, unless those words have a peculiar meaning in the law or a technical meaning, they must be interpreted based on their ordinary meaning and the context in which the words are used in the statute. *People v Lowe*, 484 Mich 718, 722; 773 NW2d 1 (2009). See also MCL 8.3a. A lay dictionary may be consulted to define common words or phrases. *People v Thompson*, 477 Mich 146, 151; 730 NW2d 708 (2007). In addition, statutes that relate to the same matter or share a common purpose are considered to be *in pari materia*, and must be read together as a whole. *Lewis*, 302 Mich App at 342.

In this case, the question is what the Legislature intended by use of the phrase "motor vehicle" in MCL 750.535(7). In pertinent part, MCL 750.535(7) provides that: "A person shall not buy, receive, possess, conceal, or aid in the concealment of a stolen motor vehicle knowing, or having reason to know or reason to believe, that the motor vehicle is stolen, embezzled, or converted." MCL 750.535(7) does not include a specific definition for "motor vehicle."

Accordingly, to discern the term's meaning, we consult a lay dictionary to ascertain the ordinary understanding of the phrase. According to the dictionary, a "motor vehicle" is "an

automobile, truck, bus, or similar motor-driven conveyance." *Random House Webster's College Dictionary* (1992). This definition accords with a common understanding of the phrase. See *Stanton v Battle Creek*, 466 Mich 611, 616; 647 NW2d 508 (2002). Other lay dictionaries similarly provide equally broad definitions of "motor vehicle." For example, the *American Heritage Dictionary* (1985) defines a "motor vehicle" as "a self-propelled, wheeled conveyance that does not run on rails." *Merriam-Webster* (online ed) describes a motor-vehicle as "a vehicle (such as a car, truck, or motorcycle) that is powered by a motor" or "an automotive vehicle not operated on rails; *especially*: one with rubber tires for use on highways." Indeed, more simply, a "motor" denotes "a comparatively small and powerful engine . . . of, by, or for motor vehicles" and a "vehicle" refers to "any means in or by which someone or something is carried or conveyed; means of conveyance or transport: *a motor vehicle*." *Random House Webster's College Dictionary* (1992). See also *Mull v Equitable Life Assurance Society of US*, 444 Mich 508, 515; 510 NW2d 184 (1994) (recognizing "motor vehicle" as "a generic term for all classes of self-propelled vehicles not operated on stationary rails or tracks").

As these ordinary definitions make plain, the defining feature of a "motor vehicle" is the fact that it is "motor-driven," or "self-propelled," and serves as a "conveyance." Thus, it seems plain that, in MCL 750.535(7), the Legislature's reference to "motor vehicle" encompasses ATVs, which constitute a motor powered means of conveyance that can be likened to cars, trucks and other motor-driven vehicles insofar as an ATV, like a car or truck, is also used to convey people. Consequently, contrary to defendant's arguments, his receipt and concealment of a stolen ATV provided a sufficient basis for conviction under MCL 750.535(7) because the stolen ATV in question qualified as a stolen "motor vehicle."

Rather than consider the common meaning of the term "motor vehicle," on appeal, defendant provides several statutory definitions of, and references to, "motor vehicle" or "ATV" drawn from various sources, including the Motor Vehicle Code, MCL 257.33, Code of Criminal Procedure, MCL 769.36(1)(b), (2)(b), (2)(e), the Natural Resources and Environmental Protection Act, MCL 324.81101(a), (s), and the Motor Vehicles Chapter of the Penal Code, MCL 750.412. Defendant asserts that these references and definitions show a clear legislative distinction between "motor vehicle" and "ATV," such that MCL 750.535(7)'s reference to "motor vehicle" should not be read to encompass an ATV.

In making this assertion, defendant fails, however, to address why these definitions should control the interpretation of MCL 750.535(7). He does not assert, for instance, that MCL 750.535(7) incorporates by reference one or all of these definitions, or that MCL 750.535(7) should be read *in pari materia* with one or all of these provisions in such a way that the same definition of motor vehicle must apply. The simple fact that these statutes include definitions for, or references to, "motor vehicle" does not mean those definitions should dictate the interpretation of the term "motor vehicle" in MCL 750.535(7). Seemingly similar statutes may govern under very different circumstances, and "reliance on an unrelated statute to construe another is a perilous endeavor to be avoided by our courts." *People v Bragg*, 296 Mich App 433, 451; 824 NW2d 170 (2012), quoting *Grimes v Mich Dep't of Transp*, 475 Mich 72, 85; 715 NW2d 275 (2006). Absent some indication that statutory definitions from other provisions should apply to MCL 750.535(7), we see no reason to depart from the statute's plain language. See *Lewis*, 302 Mich App at 347 n 9 ("There is no reference in the criminal statute to other statutes addressing [the same subject], and therefore, we do not consider them *in pari materia*.").

See also *Stanton*, 466 Mich at 616 (applying plain meaning of term "motor vehicle" to phrase as used in Governmental Tort Liability Act rather than definition found in Motor Vehicle Act).

Indeed, the definitions on which defendant relies include specific provisions limiting the use of those definitions to particular codes and chapters to which MCL 750.535(7) is not a part. For instance, MCL 257.33 is limited in application to the Motor Vehicle Code. See MCL 257.1; MCL 257.33. The definition found at MCL 750.412 applies only to the Motor Vehicle chapter of the Penal Code, of which MCL 750.535(7) is not a part. Similarly, definitions of ATV and off-road vehicle (ORV) cited by defendant from the Natural Resources and Environmental Protection Act relate only to part 811 of that act. See MCL 324.81101. Definitions in the Code of Criminal Procedure on which defendant relies are similarly limited in their application to the section in which they are found. See MCL 769.36(2). In contrast to these statutory limitations on the use of the definitions in question, defendant provides no statutory argument regarding why these definitional provisions should govern the meaning of "motor vehicle" in MCL 750.535(7).[1]

Moreover, to the extent the various statutes cited by defendant generally govern motor vehicles and should be read in harmony, even if we were to consider the statutory provisions offered by defendant, we would still conclude that an ATV qualifies as a "motor vehicle" for purposes of MCL 750.535(7). For instance, defendant first cites to MCL 769.36(1)(b), which permits consecutive sentencing in cases "where death results from the operation of a vehicle, vessel, ORV, snowmobile, aircraft, or locomotive." Defendant argues that reference to both "vehicle" and "ORV" evidences a legislatively recognition of a distinction between ORVs or ATVs and motor vehicles. However, "vehicle" under MCL 769.36(2)(d) "means that term as defined in . . . MCL 257.79." MCL 257.79 provides in turn that " '[v]ehicle' means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices exclusively moved by human power or used exclusively upon stationary rails or tracks . . . ." This Court has held that this definition includes ORVs, *People v O'Neal*, 198 Mich App 118, 120; 497 NW2d 535 (1993), defeating defendant's claim the Legislature has made a definitive recognition that an ORV or ATV is not a "vehicle" in all circumstances.

Defendant also cites MCL 257.33 of the Motor Vehicle Code, which provides:

> "Motor vehicle" means every vehicle that is self-propelled, but for purposes of chapter 4 of this act motor vehicle does not include industrial

[1] Indeed, there are numerous other definitions of "motor vehicle" in Michigan's statutes, including a definition at MCL 750.535a, a statute concerned with the operation of a chop shop, which is arguably the most closely related to MCL 750.535's subject and purpose. There a "motor vehicle" is broadly defined as either: "[a] device in, upon, or by which a person or property is or may be transported or drawn upon a highway that is self-propelled or that may be connected to and towed by a self-propelled device" or "[a] land-based device that is self-propelled but not designed for use upon a highway, including, but not limited to, farm machinery, a bulldozer, or a steam shovel." MCL 750.535a(1)(d). Clearly, an ATV would fall within this definition.

> equipment such as a forklift, a front-end loader, or other construction equipment that is not subject to registration under this act. Motor vehicle does not include an electric patrol vehicle being operated in compliance with the electric patrol vehicle act. Motor vehicle does not include an electric personal assistive mobility device. Motor vehicle does not include an electric carriage.

A "vehicle" within the meaning of MCL 257.33 is "every device in, upon, or by which any person or property is or may be transported or drawn upon a highway . . . ." MCL 257.79. This Court has recognized that an ORV is a "motor vehicle" under MCL 257.33. *Van Guilder v Collier*, 248 Mich App 633, 637; 650 NW2d 340 (2001). Thus, defendant's reliance on this statute belies his assertion that an ATV is not a "motor vehicle." Likewise, MCL 750.412 defines a motor vehicle as "all vehicles impelled on the public highways of this state by mechanical power, except traction engines, road rollers and such vehicles as run only upon rails or tracks." The definition is, like the others, conceivably broad enough to encompass ATVs.

On the whole, following the plain language of the statute, and consistent with the definitions on which defendant relies, the term "motor vehicle" as used in MCL 750.535(7) encompasses ATVs, meaning that the evidence was sufficient to support defendant's conviction for receiving and concealing a stolen motor vehicle.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Kurtis T. Wilder
/s/ Karen M. Fort Hood